THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.19388 OF 2005

Dated 2nd September 2005

Between:

A.Hanumantha Rao S/o.late Satyanarayana,

Aged 48 years, R/o.D.No.22-68-6, Chinnamvari Veedhi,

Visakhapatnam-1

…Petitioner

And

The Industrial Tribunal-cum-Labour Court,

Visakhapatnam & another

…Respondents

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O R D E R:

The petitioner was engaged as a clerk, on NMR basis, by the second respondent. On an earlier occasion, he was discontinued as NMR. Therefore, he filed I.D.No.65 of 1991, before the Industrial Tribunal-cum-Labour Court, Visakhapatnam, the first respondent herein. Through an award, dated 21.9.1992, the Labour Court directed reinstatement of the petitioner, with continuity of service and back wages. The second respondent filed W.P.No.14731 of 1992, against the award. The writ petition was dismissed on 6.9.2000.

The petitioner filed M.P.No.68 of 2002, under Section 33-C(2) of the Industrial Disputes Act, 1947, for short "the Act", before the Labour Court, against the second

respondent, claiming an amount of Rs.2,78,368/-. This amount was claimed on the basis that the petitioner was entitled to be regularized, with effect from an anterior date, and the petitioner is entitled for the difference of wages. Through its order, dated 20.5.2004, the Labour Court dismissed the M.P. Hence this writ petition.

Sri Ch.Murali Krishna, Learned counsel for the petitioner, submits that in I.D.No.65 of 1991, the Labour Court not only directed reinstatement, but also granted the benefit of continuity of service and back wages, and in that view of the matter, the petitioner was treated as regular employee. He submits that the first respondent rejected the relief, only on the ground that the petitioner did not make any request for regularization, whereas two such notices were got issued for this very purpose.

Sri N.Ranga Reddy, learned counsel for the second respondent, on the other hand, submits that at no point of time, the petitioner sought for the relief of regularization, and in that view, there was no basis for him to claim the amount of Rs.2,78,368/-.

After being reinstated into service, based on the award passed by the first respondent in I.D.No.65 of 1991, the petitioner filed M.P.No.68 of 2002, under Section 33-C(2) of the Act. Ordinarily, such an application is filed to recover the arrears of salary, or for implementation of the award. It is not the case of the petitioner that he claimed the relief of regularization, in I.D.No.65 of 1991. Neither in the award passed in I.D.No.65 of 1991, nor in W.P.No.14731 of 1992 filed against it, there was any direction in relation to the regularization of services of the petitioner. The question of payment of the salary in regular scale of pay would arise, if only the services of the petitioner were regularized. This in turn, would depend upon several circumstances, such as existence of vacancy, eligibility of the petitioner, claims of any seniors, etc. It is only when an application is filed by the petitioner seeking regularization, that the second respondent would have an occasion to consider the same. The record discloses that no such application was made by the petitioner, as yet. Once it is evident that the petitioner was neither regularized, nor any attempt was made by him to seek regularization, the question of his claiming any definite amount, representing the difference of salary, does not arise.

Therefore, this Court does not find any basis to interfere with the order passed by the first respondent, in M.P.No.68 of 2002.

Learned counsel for the petitioner submits that on account of improper understanding of law and advices tendered to him, the petitioner did not make any attempt so far, and at least now, he may be permitted to make a representation for regularization of his services, and that the second respondent be directed to consider the same. He further points out that other NMRs, who are juniors to petitioner, were regularized.

Notwithstanding the dismissal of M.P.No.68 of 2002, it shall be open to the petitioner to submit a representation to the second respondent, seeking regularization of his services. As and when such application is made, the second respondent shall consider the same, and pass appropriate orders, in accordance with law, within a period of three months, from the date of its presentation.

The writ petition is disposed of accordingly. There shall be no order as to costs.

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2nd September 2005

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